AMENDED IN SENATE JUNE 10, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL No. 1729

Introduced by Committee on Insurance (Vargas (Chair), Calderon, Chavez, Correa, Diaz, Dutra, Jerome Horton, Koretz, Nakano, and Ridley-Thomas)

March 4, 2003

An act to amend ~~Section 985~~ *Sections 985, 1063.50, 1063.52, 1063.53, 1063.54, 1063.55, and 1063.67* of the Insurance Code, relating to insolvency*, and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1729, as amended, Committee on Insurance. Insurance: insolvency.

Existing law requires the Insurance Commissioner to take possession of the property, business, books, records, and accounts of an insurer if it appears to the commissioner that the insurer is insolvent, and to retain them subject to a court order. Existing law requires a court, upon a filing by the commissioner showing the insolvency of an insurer, to issue an order vesting title to all of the insurer's assets in the commissioner. Existing law defines ''insolvency'' for these purposes to mean any impairment of minimum paid-in capital, as defined, required in the aggregate of an insurer by specified provisions of law for the classes of insurance that it transacts.

This bill would expand the definition of ''insolvency'' to include, in addition, an inability of the insurer to meet its financial obligations when they are due.

Existing law authorizes the California Insurance Guarantee Association (CIGA) to pay certain claims of insolvent insurers that arise as a result of a natural disaster, and to issue bonds for that purpose. Existing law requires that proceeds from these bonds be deposited in the Insurance Assessment Bond Fund, and provides that all money in the fund is continuously appropriated to the Department of Insurance for the purposes of these provisions. Existing law allows the department to pledge money in the fund as security for payment of the principal of, and interest and redemption premiums, if any, on these bonds. Existing law prohibits the total bonded indebtedness authorized by these provisions from exceeding the level that can be supported by the revenues dedicated to retiring the bonds.

This bill would, in addition, authorize CIGA to issue bonds to pay claims and related expenses that arise as a result of the insolvencies of insurance companies providing workers' compensation insurance. It would require that any bonds for this purpose be issued prior to January 1, 2005, and that any bonds issued to refund those bonds not have a term exceeding the term of the original bonds issued. The bill would prohibit a bond issued for this purpose from maturing more than 10 years from the date of its issue, and would allow the Department of Insurance to enter into or authorize ancillary obligations or derivative agreements to manage interest rate risk or security features related to the bonds.

The bill would allow the department, in addition to the purposes described above, to pledge money in the Insurance Assessment Bond Fund for reserve funds established as security for these bonds. By authorizing a new use for money deposited in a continuously appropriated fund, this bill would make an appropriation.

The bill would eliminate the restriction on the amount of total bonded indebtedness authorized by these provisions.

The bill would make related changes.

Vote: majority. Appropriation: ~~no~~ *yes*. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 985 of the Insurance Code is amended to read:

985. (a) On or after January 1, 1970, as used in this article and in subdivision (i) of Section 1011, ''insolvency'' means either of the following:

(1) Any impairment of minimum ‘‘paid-in capital’’ or ‘‘capital paid in,’’ as defined in Section 36, required in the aggregate of an insurer by the provisions of this code for the class, or classes, of insurance that it transacts anywhere.

(2) An inability of the insurer to meet its financial obligations when they are due.

(b) On or after January 1, 1970, an insurer cannot escape the condition of insolvency by being able to provide for all its liabilities and for reinsurance of all outstanding risks. An insurer must also be possessed of additional assets equivalent to such aggregate ‘‘paid-in capital’’ or ‘‘capital paid in’’ required by this code after making provision for all such liabilities and for such reinsurance.

(c) On or after October 1, 1967, as used in this code provision for reinsurance of all outstanding risks and ‘‘gross premiums without any deduction, received and receivable upon all unexpired risks’’ means the greater of: (1) the aggregate amount of actual unearned premiums, or (2) the amount reasonably estimated as being required to reinsure in a solvent admitted insurer the unexpired terms of the risks represented by all outstanding policies.

(d) On or after October 1, 1967, an insurer must make provision for reinsurance of the outstanding risk on policies that provide premiums are fully earned at inception and on policies that for any other reason do not provide for a return premium to the insured on cancellation prior to expiration.

(e) On or after October 1, 1967, the commissioner shall prescribe standards for reasonably estimating the amount required to reinsure that will provide adequate safeguards for the policyholders, creditors and the public.

(f) On or after October 1, 1967, this section shall not be applicable to life, title, mortgage or mortgage guaranty insurers.

(g) In the application of this section to disability insurance, as defined in Section 106, reserves for unearned premiums and amounts reasonably estimated as required to reinsure outstanding risks shall be determined in accordance with the provisions of Section 997.

SEC. 2. Section 1063.50 of the Insurance Code is amended to read:

1063.50. The California Insurance Guarantee Association is authorized to pay and discharge certain claims of insolvent insurers as defined in Section 1063.1 through the collection of premiums from its members, which amounts are limited by law and take time to assess and collect. If a natural disaster such as a major earthquake or fire were to occur in California, California's housing stock could be adversely affected and there could be an immediate need for large sums of money to pay covered claims of insolvent insurers. This article provides for the ability of the department to issue bonds to more expeditiously and effectively provide for the payment of covered claims that arise as a result of a natural disaster *or the insolvencies of insurance companies providing workers' compensation insurance*. The bonds are to be paid from the premiums assessed by the department or by CIGA for those purposes. It is a public purpose and in the best interest of the public health, safety, and general welfare of the residents of this state to provide for the issuance of bonds by the department to pay claimants and policyholders having covered claims against insolvent insurers operating in this state.

SEC. 3. Section 1063.52 of the Insurance Code is amended to read:

1063.52. The Insurance Assessment Bond Fund is hereby created in the State Treasury. Proceeds from the sale of bonds issued pursuant to this article and insurance assessments to repay bonds issued pursuant to this article shall be deposited in the Insurance Assessment Bond Fund.

All money in the fund is hereby continuously appropriated to the department for the exclusive purpose of carrying out the purposes of this part, and, notwithstanding the provisions of Chapter 2 (commencing with Section 12850) of Part 2.5 of Division 3 of Title 2 of the Government Code or the provisions of Article 2 (commencing with Section 13320) of Chapter 3 of Part 3 of Division 3 of Title 2 of the Government Code, or the provisions of Sections 11032 and 11033 of the Government Code, application of the fund shall not be subject to the supervision or budgetary approval of any other officer or division of state government. The department may pledge any or all of the moneys in the fund as security for payment of the principal of, and interest and redemption premiums, if any, on, *or for reserve funds established as security for,* bonds issued pursuant to this article, and, for that purpose or as necessary or convenient to the accomplishment of any other purpose under this article, may divide the fund into separate accounts.

SEC. 4. Section 1063.53 of the Insurance Code is amended to read:

1063.53. (a) In the event a natural disaster such as an earthquake or fire results in covered claim obligations currently payable and owed by the association in excess of its capacity to pay from current funds and current premium assessments allowable under Section 1063.5, and upon a declaration of emergency by the Governor or the President of the United States, the board, in its sole discretion, may by resolution request the department to issue bonds pursuant to this article to provide funds for the payment of covered claims and expenses related thereto. *In addition, in the event CIGA determines that the insolvency of one or more member insurers providing workers' compensation insurance will result in covered claim obligations for workers' compensation claims in excess of CIGA's capacity to pay from current funds, the board, in its sole discretion, may by resolution request the department to issue bonds pursuant to this article to provide funds for the payment of the covered claims and the adjusting and defense expenses relating to those claims. Any bonds issued to provide funds for covered claim obligations for workers' compensation claims shall be issued prior to January 1, 2005, and any bonds issued to refund those bonds shall not have a term exceeding the term of the original bonds issued.* Should the bonds be issued, the department shall have the authority to levy upon member insurers insurance assessments in the amount necessary to pay the principal of and interest on the bonds, and to meet other requirements established by agreements relating to the bonds. The department may enter into an agreement with CIGA for CIGA to act as agent for the department to collect the assessments.

The department may assume the obligation to pay the covered claims of insolvent insurers for the purpose of paying the claims with the proceeds of the bonds. The obligation of the department to pay claims shall be a limited obligation payable only ~~our~~ *out* of the proceeds of the bonds. The department shall enter into an agreement with CIGA for CIGA to act as agent of the department to adjust and administer the payment of the claims. Premium payments collected pursuant to this authority may only be used for servicing the bond obligations provided for in this section and may be pledged for that purpose. Premium assessments made pursuant to this section shall also be subject to the surcharge provisions in Sections 1063.14 and 1063.145.

(b) In addition to the premium assessments provided for in this section, the board in its discretion and subject to other obligations of the association, may utilize current funds of the association, premium assessments made under Section 1063.5, and advances or dividends received from the liquidators of insolvent insurers to pay the principal and interest on any bonds issued at the board's request.

SEC. 5. Section 1063.54 of the Insurance Code is amended to read:

1063.54. Notwithstanding any other provision of law, the department, in accordance with this article and at the request of the board pursuant to Section 1063.53 may issue bonds in order to provide for the payment of covered claims of insolvent insurers or in order to make loans to CIGA, which moneys CIGA is hereby authorized to borrow, to provide for the payment of covered claims of insolvent insurers. For this purpose, the department or CIGA may levy upon member insurers insurance assessments in the amounts necessary to pay the principal of and interest on the bonds and to meet other requirements established by agreements relating to the bonds. The department shall enter into an agreement with CIGA for CIGA to act as agent for the department to collect the assessments. The department may assume the obligation to pay the covered claims of insolvent insurers for the purpose of paying the claims with the proceeds of the bonds. The obligation of the department to pay claims shall be a limited obligation payable only out of the proceeds of the bonds. The department shall enter into an agreement with CIGA for CIGA to act as agent of the department to adjust and administer the payment of claims~~. The total bonded indebtedness authorized pursuant to this article shall not exceed the level that can be supported by the revenues dedicated to retiring the bonds~~ *and to manage the proceeds of the bonds*.

SEC. 6. Section 1063.55 of the Insurance Code is amended to read:

1063.55. The bonds shall be authorized by order of the commissioner, shall be in the form, shall bear the date or dates, and shall mature at the time or times as the order or the indenture authorized by the order may provide, except that no bond shall mature more than 20 years from the date of its issue *and no bond to finance the payment of workers' compensation covered claims shall mature more than 10 years from the date of its issue*. The bonds may be issued as serial bonds or as term bonds, or as a combination thereof, and, notwithstanding any other provision of law, the amount of principal of, or interest on, bonds maturing at each date of maturity need not be equal. The bonds shall bear interest at the rate or rates, variable or fixed or a combination thereof, be in the denominations, be in the form, either coupon or registered, carry the registration privileges, be executed in the manner, be payable in the medium of payment at the place or places within or without the state, be subject to the terms of redemption, ~~and~~ contain the terms and conditions*, and be secured by the convenants* as the order or indenture may provide. *The department may enter into or authorize any ancillary obligations or derivative agreements as it determines necessary or desireable to manage interest rate risk or security features related to the bonds.* The bonds shall be sold at public or private sale by the Treasurer at, above, or below the principal amount thereof, on the terms and conditions and for the consideration in the medium of payment that the Treasurer shall determine prior to the sale.

SEC. 7. Section 1063.67 of the Insurance Code is amended to read:

1063.67. The department is authorized and empowered to employ financial consultants, advisers, legal counsel, and accountants as may be necessary in its judgment in connection with the issuance and sale of any bonds or other obligations of the department. Payment for these services may be made out of the proceeds of the sale of the bonds or other obligations. The department may delegate to the Treasurer *or CIGA* the employment of those professionals.

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